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EXAMINER

DUNCAN, MARC M

ART UNIT	PAPER NUMBER
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2113

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DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/853,371

Applicant(s)

STEPHENSON ET AL.

Examiner

Marc M Duncan

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 14, 17, 18, 20-23, 25, 27-29, 32, 33, 35, 38-46, 48 and 49 is/are rejected.
- 7) ☒ Claim(s) 12, 15, 16, 19, 24, 26, 30, 31, 34, 36, 37 and 47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Status of the claims***

Claims 6, 13, 17, 33, 38-44 are rejected under 35 USC 112.

Claims 1-5, 6-11, 13, 14, 18, 20-23, 25, 27-29, 32, 35, 38, 39, 44-46 and 48-49 are rejected under 35 USC 102(e).

Claims 12, 15, 16, 19, 24, 26, 30, 31, 34, 36, 37 and 47 are objected to.

***Drawings***

The drawings are objected to because drawings 1, 2, 20, 21 35 and 36 are illegible. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 13, 17, 33 and 38-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "The system of claim 3" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 3 is directed to a method. It is therefore unclear as to the claim from which claim 6 is intended to depend. The examiner has chosen to examine the application as if claim 6 depended from claim

5 in the interest of compact prosecution. Claims 13 and 38-44 depend from claim 6 and include all limitations of claim 6. Appropriate correction is required.

Claim 17 appears to be missing one or more words necessary to make it grammatically correct and understandable.

Claim 33 recites the limitation "said external resources or services" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 39 contains a period after the word console. This renders the claim indefinite. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 6-11, 13, 14, 18, 20-23, 25, 27-29, 32, 35, 38, 39, 44-46 and 48-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al.

Regarding claim 1:

Smith teaches periodically monitoring performance characteristics of resources used by said application in Fig. 14 and Fig. 15.

Smith teaches modifying the behavior of said application, based on a comparison of said monitored performance characteristics to one or more predetermined values in Fig. 14 and Fig. 15.

Regarding claim 2:

Smith teaches wherein said comparison indicated that a particular action by a user of said application will result in an error or degraded performance in col. 1 lines 52-58. When a user opens other applications, i.e. performs the particular action of opening the other applications, the lack of resources would cause degraded performance or would cause the current application to be unusable because of lack of required resources.

Regarding claim 3:

Smith teaches wherein the user interface of said application is modified in col. 4 lines 42-57. Reconfiguring such that a certain component is not present, i.e. the audio or video components in the example embodiment in the reference, is a change to the user interface.

Regarding claim 4:

Smith teaches wherein the functionality of said application is curtailed in col. 4 lines 42-57.

Regarding claim 5:

Smith teaches one or more sensors in col. 1 line 63-col. 2 line 6. One or more sensors necessarily do the monitoring.

Smith teaches one or more controllers in col. 1 line 63-col. 2 line 6.

Smith teaches one or more actuators in col. 1 line 63-col. 2 line 6 and col. 2 lines 33-38. An actuator is simply anything that starts a process in motion.

Regarding claim 6:

Smith teaches the system further comprising one or more consoles in Fig. 3.

Regarding claim 7:

Smith teaches wherein said sensors measure the performance characteristics of various components of said application in col. 2 lines 39-43 and col. 2 line 63-col. 3 line 3.

Regarding claim 8:

Smith teaches wherein said measurements are communicated to said one or more controllers in col. 2 lines 1-6. The controller means control based on comparisons of the resources available to the requirements, and therefore must have received the measurements.

Regarding claim 9:

Smith teaches wherein said one or more controllers decide upon a course of action based on measurements of the performance characteristics of the components of said application in col. 2 lines 1-6.

Regarding claim 10:

Smith teaches wherein said one or more controllers apply rules to modify the behavior of said application in col. 2 lines 1-3 and col. 2 lines 52-55. Requirements to be met comprise rules that are applied in order to modify behavior.

Regarding claim 11:

Smith teaches wherein said rules can be built-in or user-defined in col. 2 lines 52-55.

Regarding claim 13:

Smith teaches wherein said one or more controllers send information to said console for output to a user of said application in Fig. 7 number "S35" and Fig. 10b numeral "S58."

Regarding claim 14:

Smith teaches wherein said one or more controllers send messages to said one or more actuators to effect said modification of said behavior of said application in col. 2 lines 1-6 and col. 2 lines 33-38.

Regarding claim 18:

Smith teaches wherein said one or more sensors measure the response time and availability of various external resources or services required by said various components of said application in col. 9 line 21-col. 10 line 25. Network connection bandwidth is monitored along with other resources. The examiner considers the monitoring of network connection bandwidth to be equivalent to monitoring response times.

Regarding claim 20:

Smith teaches wherein said sensors utilize existing performance information in col. 1 line 63-col. 2 line 1-6. Monitoring and sending performance information that is then compared is inherently using existing performance information.

Regarding claim 21:

Smith teaches wherein said sensors monitor performance characteristics explicitly specified by a user in col. 2 lines 52-55.

Regarding claim 22:

Smith teaches wherein said sensors can be generated and placed by said system in col. 1 line 63-col. 2 line 6. The system determines the resources that need to be monitored based on the information sent, and thereafter generate and place the proper sensors.

Regarding claim 23:

Smith teaches in said one or more controllers can modify the behavior of said one or more sensors in col. 2 lines 39-43. The controllers specify what resources to monitor depending on the information type.

Regarding claim 25:

Smith teaches wherein said one or more controllers can specify the type of said performance characteristics of various components of said application which are to be monitored by said one or more sensors in col. 2 lines 39-43.

Regarding claim 27:

Smith teaches wherein said actuators may effect modification of the behavior of discrete components of said application in col. 7 line 58-col. 8 line 3.

Regarding claim 28:

Smith teaches wherein said actuators may modify the user interface of said application in col. 4 lines 42-57.

Regarding claim 29:



Smith teaches wherein said actuators may restrict the functionality of said application in col. 4 lines 42-57.

Regarding claim 32:

Smith teaches wherein multiple instances of an actuator may be deployed across replicated instances of external resources or services utilized by said application in Fig. 3.

Regarding claim 35:

Smith teaches wherein a single controller is utilized in col. 7 lines 25-26.

Regarding claim 38:

Smith teaches wherein information regarding the performance of said application is displayed on said console in Fig. 7 and Fig. 10b.

Regarding claim 39:

Smith teaches wherein a user of said system can enter specific rules at said console to be applied by said one or more controllers to modify the behavior of said application col. 4 lines 32-35.

Regarding claim 44:

Smith teaches wherein said console displays messages and alerts generated by said system in Fig. 7 and fig. 10b.

Regarding claim 45:

Smith teaches one or more sensors for checking the availability and performance of external resources or services required by various components of an application running on said system in col. 1 line 63-col. 2 line 6.

Smith teaches one or more controllers for collecting information from said one or more sensors and applying rule-base criteria to said information to determine the performance and/or availability of said resources or services in col. 1 line 63-col. 2 line 6.

Smith teaches one or more actuators for modifying the behavior of said application, based on information collected by said one or more controllers in col. 1 line 63-col. 2 line 6 and col. 2 lines 22-38.

Regarding claim 46:

Smith teaches wherein said application may be web-based in col. 5 lines 43-45.

Regarding claim 48:

Smith teaches wherein said resources and said services may be supplied by systems connected via a network in Fig. 3.

Regarding claim 49:

Smith teaches wherein said sensors, controllers, actuators and consoles communicate via said network in Fig. 3.

***Allowable Subject Matter***

Claims 12, 15, 16, 19, 24, 26, 30, 31, 34, 36, 37 and 47 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Prior art was not found that explicitly teaches or fairly suggests said one or

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more controllers generating messages to other of said one or more controllers as outlined in claim 12. Prior art was not found that explicitly teaches or fairly suggests the sensors embedded in the application code as outlined in claims 15 and 30. Prior art was not found that explicitly teaches or fairly suggests the sensors utilizing software calls to an operating system as outlined in claim 16. Prior art was not found that explicitly teaches or fairly suggests a single component being monitored by a plurality of sensors as outlined in claim 19. Prior art was not found that explicitly teaches or fairly suggests the one or more controllers specifying the frequency by which said one or more sensors monitors performance characteristics as outlined in claim 24. Prior art was not found that explicitly teaches or fairly suggests said one or more controllers specifying the manner in which said one or more sensors communicate the performance characteristics as outlined in claim 26. Prior art was not found that explicitly teaches or fairly suggests a plurality of actuators utilized to modify the behavior of one or more components as outlined in claim 31. Prior art was not found that explicitly teaches or fairly suggests a single component affected by a plurality of actuators as outlined in claim 34. Prior art was not found that explicitly teaches or fairly suggests the controllers arranged in a master/slave hierarchy as outlined in claim 36. Prior art was not found that explicitly teaches or fairly suggests the controllers arranged in a process group as outlined in claim 37. Prior art was not found that explicitly teaches or fairly suggests a multi-tiered client/server application as outlined in claim 47.

***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art not relied upon contains elements of the instant claims and/or represents a current state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc M Duncan whose telephone number is 703-305-4622. The examiner can normally be reached on M-T and TH-F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 703-305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md

  
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